

HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION No.13643 of 2005

20-08-2005

Between:

K. Linga Reddy

... Petitioner.

And

The Government of India,

Rep.by its Secretary to Government,

Ministry of Industries, Udyog Bhavan,

New Delhi – 110011.

... Respondents.

HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION No.13643 of 2005

ORDER :

This writ petition is filed by the petitioner praying for issue of Writ of Certiorari calling for the records relating to the order issued by the third respondent in Ref.No.CITD /EG-56/83/4633, dated 9-3-2005 as confirmed in the orders in Memo No.21/03/CITD/2004/TR-1, dated 28-4-2005 issued by the second respondent and quash the same holding as illegal, arbitrary, unjust and discriminatory and further declare that the petitioner's voluntary retirement application is deemed to have been accepted with effect from 30-6-2004 and direct the respondents to release all the Voluntary Retirement Scheme(VRS) benefits to the petitioner immediately.

According to the petitioner, the Central Institute of Tool Design (CITD), Hyderabad in which the petitioner was working as Deputy Director, introduced the VRS on 1-1-2004 as approved by the Governing Council of the Institute. As per the said scheme, the eligibility of the employee for opting the said scheme is that the employee must have completed ten years of satisfactory service and also should have attained the age of 40 years. Further as per Clause (5) the Principal Director of CITD shall have exclusive right to decide, to grant or to reject the request for voluntary retirement. The other conditions specified in the scheme may not be relevant for the purpose of this case. It is stated that though the third respondent forwarded four applications out of eight applications received by the institute, the petitioner's application was not forwarded and accepted, therefore, the petitioner approached this Court by filing W.P.No.13433 of 2004 which was disposed of on 2-8-2004, directing the third respondent to pass appropriate orders on the

application of the petitioner in the light of the directions given therein. Thereafter the third respondent passed order rejecting the application of the petitioner. In fact, in the meanwhile the petitioner was transferred from Hyderabad to Visakhapatnam. Therefore, the petitioner approached this Court again by filing W.P.No.14812 of 2004 which was also disposed of by this Court on 28-12-2004 under which the impugned order passed by the third respondent dated 11-8-2004 was set aside and the matter was remitted to the third respondent for reconsideration afresh in terms of the directions of this Court in W.P.No.13433 of 2004, dated 2-8-2004. Thereafter the third respondent again passed order rejecting the application of the petitioner. In fact, under the impugned order, the third respondent was specifically relied upon Clause (5) of the VRS Scheme dated 1-1-2004, stating that the Principal Director has got exclusive right either to grant or reject the voluntary retirement application.

Further the stand of the third respondent was that voluntary retirement applications were accepted only in respect of those cases where the posts to be vacated by the employees on the acceptance of the said application are to be abolished, and therefore, the petitioner's application was not accepted as it would cause dislocation of the work and the post would be abolished. It is further stated that though the VRS Scheme was first introduced on 1-1-2004 it was extended from time to time, intending to reduce the existing staff, which clearly shows that the respondent Institute is interested to reduce the number of staff including the members occupying the posts of Directors and Deputy Directors, as is evident from the proceedings of the second respondent approving the proposal sent by the third respondent for abolition of 6 posts of Directors/Deputy Directors. According to the third respondent, the petitioner, as Deputy Director, was looking after the duties of Training Department and functioning as Faculty Member and abolition of the post of Deputy Director will cause serious dislocation of the work in the Institute and will result in the abolition of the post of Deputy Director, which the petitioner is holding,

and therefore, the application of the petitioner was rejected. Though the petitioner filed an appeal before the second respondent, the second respondent agreed with the view of the third respondent and accordingly rejected the appeal. Hence the present writ petition.

A detailed counter is filed by the third respondent disputing and denying the allegations made by the petitioner. In the counter, the stand of the third respondent is that under the scheme of VRS, the third respondent has got absolute discretion to accept or reject the VRS application and when once such an application of the petitioner was rejected, he has no right to litigate with reference to the said application. It is also stated in the counter that if the petitioner is pressing the VRS on health grounds, the same is not relevant and instead of VRS the petitioner can seek normal voluntary retirement on such grounds, as he is entitled under law for such benefit. The third respondent also stated that even the representation of the petitioner against his transfer was rejected by the second respondent in the interest of the Institute's work. Therefore, there is no merit in the writ petition. It was further stated that as per the scheme approved by the competent authority, the posts to be vacated by the employees on the ground of VRS are to be abolished, therefore, only such of those employees who can be relieved without causing dislocation of the work will only be granted voluntary retirement. The petitioner, as a Deputy Director, is looking after the duties of Training Department and functioning as a Faculty and abolition of the post of Deputy Director on the ground of VRS will cause serious dislocation of work in the Institute and also result in the abolition of the post of Deputy Director, which he is holding, therefore, the request of the petitioner for the grant of VRS was rejected and the said rejection was even confirmed by the appellate authority. Therefore, the stand of the respondents is that the VRS is being accepted only with reference to the posts which are decided to be abolished along with acceptance of VRS applications and not in other cases.

The learned senior counsel Sri D. Prakash Reddy appearing for the petitioner contended that the action of the third respondent in not accepting the claim of the petitioner is malafide. It is stated that the petitioner is due for retirement in the normal course by 31-3-2006. Further the petitioner, as Deputy Director, was attending the work of training where regular training courses are being conducted at Hyderabad. Though the stand of the third respondent was that the services of the petitioner are essential being a Member of the Faculty in the Training Institute, but contrary to the said stand, the petitioner was transferred to Visakhapatnam where there is no existing Training Facility as of now, and in fact, the petitioner was asked to look after the renovation or repairs that are being carried out to the buildings. The learned counsel also seriously contended that, in fact, the third respondent accepted the application of one D.N.Prasad, though he was recruited as a Security Inspector, but he was looking after the Training Wing both on administrative side as well as on Faculty side, against whom there were disciplinary proceedings pending, including the writ petition filed before this Court in W.P.No.14812 of 2004. In fact, as per the scheme announced by the CITD, there is a prohibition, against whom disciplinary proceedings are pending or who are undergoing punishment, either to opt or to accept the applications of those employees. But contrary to the said restriction, the third respondent accepted the application of Sri D.N.Prasad, in fact, even by taking an undertaking to withdraw the writ petition, which was filed by him before this Court. This clearly shows the malafide intention of the third respondent. Apart from all the above, the learned senior counsel brought to the notice of this Court the proceedings of the second respondent dated 12-4-2005 under which the proposals sent by the third respondent for restructuring of the staff was approved and as per which the third respondent proposed for abolition of 6 posts of Directors, Gr.II/ Deputy Directors, which clearly shows that the institute has decided to abolish the posts of Directors/Deputy Directors numbering to six and despite the said proposal sent by

the third respondent and approved by the second respondent, a contrary stand was taken by the third respondent both in his proceedings while rejecting the application of the petitioner as well as in the counter. This stand of the third respondent is not only suppression of material facts thereby misleading the Court, but also acting malifide only to see that the application of the petitioner under VRS is not being accepted. Therefore, sought for appropriate orders.

The learned standing counsel for CITD, on the other hand, supported the impugned order reiterating the contents of the counter.

From the above rival contentions, the limited issue to be considered is whether non-acceptance of the petitioner's application is valid and in terms of the scheme and in the interest of the Institution.

As could be seen from the scheme of VRS published by the Organisation in its Office Memorandum dated 1-1-2004, it does not specify that the scheme would apply to any specific category of employees of the Organisation. The only restriction as to the eligibility is that an employee opting for VRS must have completed 10 years of satisfactory service and should have attained the age of 40 years. There is no other stipulation. But, however, the said scheme also empowers the management represented by the Principal Director, the third respondent herein, who shall have the exclusive right to decide either to grant or reject the request for voluntary retirement by any applicant and such decision shall be final and binding and shall not be open for any arbitration, dispute or litigation. No doubt, the above clause gives absolute discretion to the third respondent, but the third respondent, being a Public Servant discharging the public duties, cannot claim that his word is final, especially when allegations of discrimination as well as personal motive were attributed to the third respondent, the actions of every public authority are liable for

judicial scrutiny and cannot claim any immunity from such scrutiny. In fact, one of the allegations made by the petitioner was that the application of one Sri D.N.Prasad, Security Inspector, was accepted even though he was undergoing punishment, and in fact, he filed a writ petition, which was pending before this Court and during the pendency

of the writ petition, by taking an undertaking that he will

withdrew his writ petition, his case was accepted. In fact, according to the petitioner, though the designation of

Sri D.N.Prasad is Security Inspector, but he was actually discharging the functions as a Member of Administration as well as Faculty. When such was the case with reference to one of the employees, while at the same time the petitioner's application was rejected and immediately thereafter the petitioner was even transferred from Hyderabad Unit to Visakhapatnam, where there is no Training Unit, contrary to their own version, the allegations made against the third respondent have to be examined.

Now the stand of the respondents is that the services of the petitioner, who is holding the post of Deputy Director in the Training Unit and as a Member of Faculty, are essential to the Institute, therefore, his application under VRS cannot be accepted and be relieved, which will have the effect of abolishing the said post, if accepted. But the subsequent events that had taken place shows that the stand of the third respondent is merely illusory. If the services of the petitioner are essential in the Training Unit, as a Member of Faculty, how he can be shifted to Visakhapatnam where there is no Training Unit and where he could not discharge any duties as Member of Faculty. On the other hand, though it was not specifically stated in the counter, the petitioner was expected to look after the repairs of the buildings as if it is the

duty of a Faculty, who has to look after those functions especially when Engineering staff is available. In addition, the counter is silent with reference to the proceedings dated 12-4-2005 of the second respondent where the proposal sent by the third respondent for restructuring of the staff was accepted. As per the said proceedings, the second respondent accepted the proposals of the third respondent for the abolition of 6 posts of Director, Gr.II/Deputy Director (Rs.10,000/- to Rs.15,200/-) by creating 4 posts of Engineers, Gr.I (Rs.6,500/- to Rs.10,500/-); and 6 posts of Engineers, Gr.II (Rs.5,500/- to Rs.9,000/-). When this is the mind of the Institute or the third respondent where he sent proposals for restructuring the staff thereby abolishing 6 posts of Director, Gr.II/Deputy Director, the specific absence of reference to the document, which was filed at page 73 of the material papers in the writ petition, clearly speaks volumes of the mind of the third respondent how he was biased and ill-disposed of against the petitioner to deny the benefit of VRS to the petitioner. In fact, what the third respondent has stated in the counter goes exactly counter to the proceedings sent by the third respondent himself seeking approval for abolition of 6 posts of Directors, Gr.II/Deputy Directors. This clearly proves that there is any amount of truth in the allegations made by the petitioner against the third respondent. Admittedly as on 1-1-2004 as per the material placed by the respondents pursuant to the directions of this Court, there were 3 Directors, Gr.II and 6 Deputy Directors and as per the proposals sent by the third respondent in the process of restructuring, permission was sought for abolition of 6 posts of Directors, Gr.II/Deputy Directors (a unified cadre). In fact, it was the claim of the respondents-institution that the VRS was also introduced in the process of restructuring of the staffing pattern so as to reduce the staff strength to reduce the over all cost of the maintenance of the institution. If VRS was introduced for reduction of staff strength to streamline the staff pattern as well as to reduce the staff strength and especially when the third respondent proposed for abolition of 6 posts of Directors, Gr.II/Deputy Directors, retaining only 8 posts out of the total of

14 posts, there may not be any objection either to accept the application of the petitioner under VRS or even for abolition of the said post as was explained by the third respondent. Therefore, the contra averments made in the counter that the services of the petitioner are essential and if his VRS application is accepted, it would result in the abolition of the post are clearly false and are made only to deny and deprive the benefits of VRS to the petitioner. The transfer of the petitioner from Hyderabad to Visakhapatnam where there is no training unit also speaks volumes of the mind of the third respondent that what he has stated in the counter is not correct. If really the services of the petitioner as Member of the Faculty are required, he would have been retained at Hyderabad itself where there is a training unit for giving training to the students, but on the other hand, he was transferred to Visakhapatnam where there is no training unit and was asked to look after the repairs to the buildings, which is the function of the Engineering Unit.

Under the above circumstances, the impugned proceedings issued by the third respondent, as confirmed by the second respondent, are clearly not based on the factual situation and are issued only with a motive to deprive the petitioner the benefits of VRS, and as such, the impugned proceedings are illegal and unsustainable. Therefore, the impugned proceedings are set aside and the third respondent is directed to accept the application of the petitioner under VRS with all consequential benefits, as the acceptance of the application of the petitioner under VRS, in fact, would be in conformity with the proposal sent by the third respondent to the second respondent for restructuring of the staff of the Institute.

The writ petition is accordingly allowed with costs.

(S.ANANDA REDDY,J.)

20-08-2005.

Msr.

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(Msr)